

RESOLUTION NO. 88-39

RESOLUTION APPROVING AGREEMENT FOR THE COUNTY OF SAN JOAQUIN FOR THE COUNTY TO
PROVIDE DATA PROCESSING SERVICES TO THE CITY OF LODI FOR FISCAL YEAR 1988-89

RESOLVED, that the City Council of the City of Lodi does hereby approve an Agreement whereby the County of San Joaquin will provide data processing services to the City of Lodi for fiscal year 1988-89, a copy of which is attached hereto, marked Exhibit A and thereby made a part hereof.

BE IT FURTHER RESOLVED, that the City Council of the City of Lodi does hereby authorize the City Manager and City Clerk to execute the subject Agreement on behalf of the City.

Dated: April 6, 1988

I hereby certify that Resolution No. 88-39 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 6, 1988 by the following vote:

Ayes: Council Members - Hinchman, Pinkerton, Reid, Snider and Olson (Mayor)

Noes: Council Members - None

Absent: Council Members - None


Alice M. Reimche
City Clerk

A G R E E M E N T

THIS AGREEMENT, made and entered into this 1st day of July, 1988, by and between the COUNTY OF SAN JOAQUIN, through its Data Processing Division, hereinafter referred to as "COUNTY" and CITY OF LODI, hereinafter referred to as "CONTRACTOR";

WITNESSETH:

WHEREAS, COUNTY provides the following services to CONTRACTOR:
and;

WHEREAS, COUNTY has certain data processing equipment and is able to provide data processing services which CONTRACTOR desires to use in its operations;

IT IS HEREBY AGREED between the parties as follows:

1. COUNTY will provide the services and equipment for the estimated annual amount of compensation as shown in Attachments "A" and "B".

The total services and equipment which CONTRACTOR may utilize pursuant to this agreement shall not exceed that which has been set forth in Attachments "A" and "B". The total maximum compensation to COUNTY pursuant to this agreement shall not exceed \$4,340.00 per fiscal year. COUNTY shall bill CONTRACTOR only for actual services performed and equipment provided one (1) month after services are performed and equipment is provided. CONTRACTOR shall provide full payment to COUNTY of the billed amount by the fifteenth day of the date of billing. In the event payment is not made in accordance with this provision COUNTY may, at its option, terminate the agreement in accordance with the provisions of Paragraph 5.

2. In the event that COUNTY'S cost of services and equipment is increased due to any reason, COUNTY may increase the rate of compensation (which may also result in the estimated annual amount of compensation provided herein to be increased) for services and equipment provided herein upon COUNTY so notifying CONTRACTOR, in writing, no less than ninety (90) calendar days in advance of the intended change of rate of compensation. CONTRACTOR shall be allowed the option to terminate this agreement in accordance with the provisions of Paragraph 5 in the event of an increase in the rate of compensation.

3. Service and equipment under this agreement are limited solely to the ongoing services, systems, and equipment listed in Attachments "A" and "B" which are in operation on the effective date of this agreement. Services and equipment not covered in this agreement may be provided to CONTRACTOR at COUNTY'S option subject to the following conditions:

- (a) CONTRACTOR must submit a written request for the additional services and/or equipment which has been signed by the appropriate agency official, and
- (b) Additional services and/or equipment shall be provided at the current rates of compensation and shall be billed as additional items over and beyond the total estimated annual amount of compensation designed in this agreement.

Maintenance in connection with the equipment provided under this agreement is included in the rate of compensation for equipment and will not be billed as an additional charge to CONTRACTOR.

4. The term of this contract shall be one year beginning July 1, 1988, and ending June 30, 1989.
5. This contract may be terminated by either party upon thirty (30) calendar days advance written notice to the other party. Notwithstanding such termination, CONTRACTOR shall compensate COUNTY for the actual services performed and equipment provided through the date the termination of the contract is effective. If CONTRACTOR fails to timely compensate COUNTY as provided in this contract, CONTRACTOR shall be held liable for the reasonable cost of collecting such compensation including attorneys fees and court costs incurred by COUNTY.
6. All rental equipment in the possession of CONTRACTOR shall be returned to COUNTY in the same condition as it was delivered to CONTRACTOR, less normal wear and tear. COUNTY shall be compensated by CONTRACTOR for all loss or damage to said equipment which is not the result of a wilful or negligent act by COUNTY and which does not constitute normal wear and tear.

The CONTRACTOR agrees that it shall indemnify and hold harmless the COUNTY, the members of its Board of Supervisors, its officers, agents, and employees, from and against all demands, claims, damages, losses, expenses, and costs including attorneys' fees and court costs arising out of and/or resulting from

the performance of the activities and services contemplated by this agreement, except for demands, claims, damages, losses, expenses, and costs resulting from the sole and exclusive negligence of the COUNTY, or it's agents.

The CONTRACTOR at its own expense and risk shall defend against any and all demands, actions, suits, claims, or other legal proceedings that may be brought or instituted against the COUNTY, the members of its Board of Supervisors, its officers, agents, or employees, arising out of and/or resulting from the performance of the activities and services contemplated by this agreement, except those demands, actions, suits, claims, or other legal proceedings resulting from the sole and exclusive negligence of COUNTY, or it's agents, or those brought by employees or agents of COUNTY concerning their employment or agency relationship.

7. In the event of errors in data processing results due to the failure of COUNTY'S equipment, software, circumstances beyond the control of COUNTY, or the failure of COUNTY'S employee(s) to operate the equipment in accordance with COUNTY'S standard operating procedures, or COUNTY'S inability to provide data processing services due to circumstances beyond its control. COUNTY'S liability shall be limited to either subparagraph (a) or (b) below, either of which will be considered to be CONTRACTOR'S exclusive remedy:

- (a) The correction of errors of which COUNTY has received written notice and proof or the performance of the service, whichever is the situation; or
- (b) Where such correction or performance of service is not practicable, CONTRACTOR shall be entitled to an equitable credit not to exceed the charges invoiced to CONTRACTOR for that portion of the service which produced the erroneous result or for that portion of the service which could not be performed, whichever is the situation.

COUNTY shall be liable for the loss, destruction or damage to CONTRACTOR'S supplied materials only if such loss, destruction, or damages was due to the negligence of COUNTY and CONTRACTOR'S sole remedy shall be COUNTY restoring the same, provided such restoration can be reasonably performed by COUNTY and provided that CONTRACTOR provides COUNTY with all source data necessary for such restoration in similar form to that normally presented to COUNTY under this Agreement.

8. The CONTRACTOR, and the agents and employees of CONTRACTOR, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of COUNTY.
9. Without the written consent of COUNTY, this agreement is not assignable by CONTRACTOR either in whole or in part.
10. Time is the essence of this agreement.
11. No alteration, variation, or modification of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
12. CONTRACTOR shall comply with the California Fair Employment Practices Act (Labor Code Section 1410, et seq.) and any amendments thereto.

This contract may, at the option of COUNTY be terminated or suspended in whole or in part in the event CONTRACTOR fails to comply with the nondiscrimination clause of the contract. In the event of termination under this paragraph, COUNTY shall be compensated for goods and services provided to the date of termination. Termination or suspension shall be effective upon receipt of written notice thereof.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first written above.

COUNTY OF SAN JOAQUIN, a
political subdivision of
the State of California

By DAVID D. ROWLANDS, JR.
County Administrator

"COUNTY"

APPROVED AS TO FORM:
JOHN CHEADLE
County Counsel

CITY OF LODI

By Rebecca A. Davis
REBECCA A. DAVIS
Deputy County Counsel

By Thomas A. Peterson
Thomas A. Peterson
Title City Manager

"CONTRACTOR"

Attest: Alice M. Reinche
Alice M. Reinche
City Clerk

ATTACHMENT A

CITY OF LODI

I. Estimated Annual Cost of Services

A. County Law Enforcement System

1. Teleprocessing Transactions

An average 50,000 transactions
per year at \$.07 each

\$ 3,500.00

TOTAL \$ 3,500.00

CITY OF LODIII. Estimated Annual Cost EquipmentA. Terminals

Two (2) ADM CRT at \$35.00 ea.
per month

\$ 840.00

TOTAL

\$ 840.00